

SPCB B&P CODE UPDATES TO THE 2007 SPCB ACT

COVERING THE PERIOD OF:

MAY 2007

THROUGH

JANUARY 2009

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8505.2. Fumigation shall be performed only under the direct and personal supervision of an individual who is licensed by the board as an operator or field representative in a branch of pest control ~~which that~~ includes fumigation ~~or who is the qualifying manager of a registered company which is so registered.~~

8505.3. "Direct and personal supervision" as used in Section 8505.2 means that the Branch 1 licensee exercising ~~such that~~ supervision shall be present at the site of the fumigation during the entire time the fumigants are being released, the time ventilation is commenced, and at the time property is released for occupancy.

8505.4. Fumigation shall be performed in compliance with all applicable state, county, ~~city~~ and city ~~and county~~ laws and ordinances and all applicable laws and regulations of the United States.

~~**8505.15.** Two effective masks of a type approved by the National Institute of Occupational Safety and Health for protection against the fumigant being used shall be made readily available by the registered company to a fumigating crew whenever a fumigant is introduced into or removed from a structure.~~

8506.1. A "registered company" is any sole proprietorship, partnership, corporation, or other organization or any combination thereof ~~which that~~ is registered with the Structural Pest Control Board to engage in the practice of structural pest control.

A registered company may secure structural pest control work, submit bids, or otherwise contract for pest control work. A registered company may employ licensed field representatives and licensed operators to identify infestations or infections, make inspections, and represent the company in the securing of pest control work. A registered company may hire or employ individuals who are not licensed under this chapter to perform work on contracts covering wood-destroying organisms only after an operator or field representative has fully completed the negotiation or signing of the contract covering a given job.

A registered company may hire and use individuals who are not licensed under this chapter on service contracts already established.

8507. (a) "Structural pest control field representative" is any individual who is licensed by the board to secure structural pest control work, identify infestations or infections, make inspections, apply pesticides, submit bids for or otherwise contract, ~~in~~ on behalf of a registered company.

A pest control field representative shall not contract for pest control work or perform pest control work ~~in~~ on his or her own behalf.

(b) As used in this chapter, "field representative" refers to "structural pest control field representative."

8509. "Branch office" is any fixed place of business in addition to the location of ~~business~~ the principal office for which the company registration is issued, where records are kept, mail received, statements rendered, money is collected, or requests are received for service or bids, or information is given pertaining to the practice of pest control, other than governmental offices.

8510. For purposes of this chapter, "wood preservative" means any coating formulated to protect wood surfaces from deterioration caused by insects, fungus, rot, and decay and which contains a

wood preservative chemical that is registered with the ~~California~~ Department of Food and Agriculture Pesticide Regulation and the United States Environmental Protection Agency.

8512. "Employer" refers to a registered company ~~which hires~~ that employs operators, field representatives, applicators, and other individuals, the latter not being required to be licensed under this chapter, who work on pest control jobs under the supervision of an operator or field representative.

8514. No registered company shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the control of household pests, or wood destroying pests or organisms until an inspection has been made.

Notwithstanding any provision of this chapter, after an inspection has been made, a registered company which holds a branch registration for the control of household pests, or wood destroying pests or organisms, but its branch registration restricts the method of eradication or control permitted, may recommend and enter into a contract for the eradication or control of pests within the scope of its branch registration, provided that it subcontracts in writing the actual performance of the work to a registered company which holds a branch registration authorizing the particular method to be used.

A registered company may in writing subcontract any pest control work for which it is registered in any branch or branches to a registered company holding a valid branch registration to do such work.

Nothing in this chapter shall be construed to prohibit a registered company or the consumer from subcontracting with a licensed contractor to do any work authorized under Section 8556.

A registered company shall not subcontract structural fumigation work, as permitted in this section, without the written consent of the consumer. The consumer must be informed in advance, in writing, of any proposed work which the registered company intends to subcontract and of the consumer's right to select another person or entity of the consumer's choosing to perform the work. The consumer may authorize the subcontracting of the work as proposed or may contract directly with another registered company licensed to perform the work. Nothing in this paragraph shall be construed to eliminate any otherwise applicable licensure requirements, nor permit a licensed contractor to perform any work beyond that authorized by Section 8556.

Nothing herein contained shall permit or authorize ~~any a~~ registered company to perform, attempt to perform, advertise or hold out to the public or to any person that it is authorized, qualified, or registered to perform, pest control work in ~~any a~~ branch, or by ~~any a~~ method, for which it is not registered, except that a Branch 2 or Branch 3 registered company may advertise fumigation or any all encompassing treatment described in paragraph (8) of subdivision (a) of Section 1991 of Title 16 of the California Code of Regulations if the company complies with the requirements of this section.

Subcontracting of work, as permitted herein, shall not relieve the prime contractor or the subcontractor from responsibility for, or from disciplinary action because of, ~~any an~~ act or omission on its part, which would otherwise be a ground for disciplinary action. However, the registered company making the initial proposal including proposed work that the registered company intends to subcontract shall not be subject to disciplinary action or otherwise responsible for ~~any an~~ act or omission in the performance of the work that the consumer directly contracts with another registered company to perform, as permitted by this section.

8525. The board, subject to the approval of the director, may, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

adopt, amend, repeal, and enforce reasonably necessary rules and regulations relating to the practice of pest control and its various branches as established by Section 8560 and the administration of this chapter.

The board shall also consult with the ~~Director of Food and Agriculture~~ Department of Pesticide Regulation when developing or adopting regulations that may affect the Department of ~~Food and Agriculture~~ Pesticide Regulation or the county agricultural commissioner's responsibilities pursuant to Division 7 (commencing with Section 12501) of the Food and Agricultural Code.

8551.5. No unlicensed individual in the employ of a registered company shall apply any pesticide, rodenticide, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests, or organisms included in Branch 2 or Branch 3. However, an individual may, for 30 days from the date of ~~hire~~ employment, apply pesticides, rodenticides, or allied chemicals or substances for the purposes of training under the direct supervision of a licensed field representative or operator employed by the company. This direct supervision means in the presence of the licensed field representative or operator at all times. The 30-day time period may not be extended.

8565.5. (a) An applicant for a Branch 1 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

- (1) Pesticides.
- (2) Pest identification and biology.
- (3) Contract law.
- (4) Rules and regulations.
- (5) Business practices.
- (6) Fumigation safety.

(b) An applicant for a Branch 2 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

- (1) Pesticides.
- (2) Pest identification and biology.
- (3) Contract law.
- (4) Rules and regulations.
- (5) Business practices.

(c) An applicant for a Branch 3 operator's license shall demonstrate to the board that he or she has passed satisfactorily board-approved courses in the following areas:

- (1) Pesticides.
- (2) Pest identification and biology.
- (3) Contract law.
- (4) Rules and regulations.
- (5) Business practices.
- (6) Construction repair and preservation techniques.

~~The board shall develop a correspondence course or courses with any educational institution or institutions as it deems appropriate. These courses may be used to fulfill the requirements of this section. The institution may charge a reasonable fee for each course.~~

8572. (a) Notwithstanding any other provision of law, the board may, in its sole discretion, issue a probationary license to an applicant subject to terms and conditions deemed appropriate by the board, including, but not limited to, the following:

- (1) Continuing medical, psychiatric, or psychological treatment.
- (2) Ongoing participation in a specified rehabilitation program.

(3) Abstention from the use of alcohol or drugs.

(4) Compliance with all provisions of this chapter.

(b) (1) Notwithstanding any other provision of law, and for purposes of this section, when deciding whether to issue a probationary license, the board shall request that an applicant with a dismissed conviction provide proof of that dismissal and shall give special consideration to applicants whose convictions have been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(2) The board shall also take into account and consider any other reasonable documents or individual character references provided by the applicant that may serve as evidence of rehabilitation as deemed appropriate by the board.

(c) The board may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the applicant or licensee.

(d) For purposes of issuing a probationary license to qualified new applicants, the board shall develop standard terms of probation that shall include, but not be limited to, the following:

(1) A three-year limit on the individual probationary license.

(2) A process to obtain a standard license for applicants who were issued a probationary license.

(3) Supervision requirements.

(4) Compliance and quarterly reporting requirements.

8591. If delinquency in the payment of the fee for renewal of any ~~operator's or field representative's~~ license extends beyond three months, the license ~~may~~ shall not be reinstated and the licensee ~~may~~ shall be required to obtain a new license in accordance with the provisions of Article 4 (commencing with Section 8560).

8592. Any ~~operator, field representative, or applicator~~ licensee whose license is under suspension may make application for renewal of his or her license as provided in this article, but the board may not renew his or her license until the suspension has been lifted.

8610. (a) Every company that engages in the practice of structural pest control, as a sole proprietorship, partnership, corporation, or other organization or any combination thereof, shall be registered with the Structural Pest Control Board. Each application for a company registration shall include the name of the company's owner if it is a sole proprietorship, the names of the partners, if it is a partnership, or the names of its officers and shareholders with 10 percent or more ownership interest, if it is a corporation, and the address of the company's principal office in this state.

(b) (1) A company registration shall not be issued to an applicant that has an officer, director, qualifying manager, responsible managing employee, or an individual who otherwise exercises dominion or control over the company, whose license or registration is revoked or suspended at the time of the application as the result of disciplinary action pursuant to this chapter.

(2) A company registration shall not be issued to an applicant that has an officer, director, qualifying manager, responsible managing employee, or an individual who otherwise exercises dominion or control over the company, who owns or has owned in the past more than a 10 percent interest in another sole proprietorship, partnership, corporation, or other organization that has its license or registration revoked or suspended at the time of the application as the result of disciplinary action pursuant to this chapter.

(c) Each registered company shall designate an individual or individuals who hold an operator's license to act as its qualifying manager or managers. The qualifying manager or managers must

be licensed in each branch of pest control in which the company engages in business. The designated qualifying manager or managers shall supervise the daily business of the company and shall be available to supervise and assist all employees of the company, in accordance with regulations which the board may establish.

(d) No individual who holds an operator's license shall act as a qualifying manager for more than two registered companies.

(1) Any individual, who on January 1, 2008, is acting as the qualifying manager for more than two registered companies shall comply with this subdivision by January 1, 2010.

(2) Commencing January 1, 2010, failure to comply with this subdivision shall result in the disassociation of the qualifying manager and the automatic suspension of the company's registration.

(3) This subdivision shall not apply to a company engaging in the practice of structural pest control as a corporation and which has an additional company or companies operating under that corporation and doing business in a name other than the corporation name.

8611. Each branch office shall have a branch supervisor designated by the registered company to supervise and assist the company's employees who are located at that branch. The branch supervisor shall be an individual who is licensed by the board as an operator or a field representative and his or her license shall be prominently displayed in the branch office.

If a branch supervisor ceases for any reason to be connected with a registered company, the company shall notify the registrar in writing within 10 days from that cessation. If this notice is given, the company's branch office registration shall remain in force for a reasonable length of time to be determined by rules of the board, during which period the company shall submit to the registrar in writing the name of another qualified branch supervisor.

8612. The licenses of ~~operators~~ qualifying managers and company registrations shall be prominently displayed in the registered company's office, and no registration issued hereunder shall authorize the company to do business except from the location for which the registration was issued. Each registered company having a branch office or more than one branch office shall be required to display its branch office registration prominently in each branch office it maintains.

When a registered company opens a branch office it shall notify the registrar in writing on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The notification shall include the name of the individual designated as the branch supervisor and shall be submitted with the fee for a branch office prescribed by this chapter.

8617. (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars (\$1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter, or Chapter 14.5 (commencing with Section 8698), or any regulations adopted pursuant to these chapters, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to pesticides. However, any violation determined by the board or the commissioner to be a serious violation as defined in Section 1922 of Title 16 of the California

Code of Regulations shall be subject to a fine of not more than five thousand dollars (\$5,000) for each violation. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

(b) A licensee who passes a course pursuant to this section shall not be awarded continuing education credit for that course.

(c) Before a suspension action is taken, a fine levied, or a licensee is required to attend and pass a board-approved course of instruction, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation, the amount of the proposed fine or suspension, or the requirement to attend and pass a board-approved course of instruction. The notice of proposed action shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written notice to the commissioner within 20 days of the date of receipt of the written notice of proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner imposed a fine or suspension or required attendance at a board-approved course of instruction requested and appeared at a hearing before the commissioner, the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(e) If a suspension or fine is ordered, it may not take effect until 20 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 30 days after the Disciplinary Review Committee has ruled on the appeal.

(f) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board. Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine. Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any ~~inspection stamps, notice of completion stamps, or~~ pesticide use stamps until the assessed fine has been paid.

Where a citation containing the requirement that a licensee attend and pass a board-approved course of instruction is not contested or the time to appeal the citation has expired and the licensee has not attended and passed the required board-approved course of instruction, the licensee's license shall not be renewed without proof of attendance and passage of the required board-approved course of instruction.

(g) Once final action pursuant to this section is taken, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple

local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

(h) Where the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a) ~~of this section~~, "commissioner" as used in subdivisions (c), (d), and (e) includes the board's registrar.

8623. (a) Notwithstanding Section 8620 or any other provision of law, the board may revoke, suspend, or deny at any time a license under this chapter on any of the grounds for disciplinary action provided in this chapter. The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(b) The board may deny a license to an applicant on any of the grounds specified in Section 480.

(c) In addition to the requirements provided in Sections 485 and 486, upon denial of an application for a license, the board shall provide a statement of reasons for the denial that does the following:

(1) Evaluates evidence of rehabilitation submitted by the applicant, if any.

(2) Provides the board's criteria relating to rehabilitation, formulated pursuant to Section 482, that takes into account the age and severity of the offense, and the evidence relating to participation in treatment or other rehabilitation programs.

(3) If the board's decision was based on the applicant's prior criminal conviction, justifies the board's denial of a license and conveys the reasons why the prior criminal conviction is substantially related to the qualifications, functions, or duties of a licensed structural pest control operator.

(d) Commencing July 1, 2009, all of the following shall apply:

(1) If the denial of a license is due at least in part to the applicant's state or federal criminal history record, the board shall, in addition to the information provided pursuant to paragraph (3) of subdivision (c), provide to the applicant a copy of his or her criminal history record if the applicant makes a written request to the board for a copy, specifying an address to which it is to be sent.

(A) The state or federal criminal history record shall not be modified or altered from its form or content as provided by the Department of Justice.

(B) The criminal history record shall be provided in such a manner as to protect the confidentiality and privacy of the applicant's criminal history record and the criminal history record shall not be made available by the board to any employer.

(C) The board shall retain a copy of the applicant's written request and a copy of the response sent to the applicant, which shall include the date and the address to which the response was sent.

(2) The board shall make that information available upon request by the Department of Justice or the Federal Bureau of Investigation.

(e) Notwithstanding Section 487, the board shall conduct a hearing of a license denial within 90 days of receiving an applicant's request for a hearing. For all other hearing requests, the board shall determine when the hearing shall be conducted.

8698. The Director of the Department of Pesticide Regulation shall be designated by the board as its agent for the purposes of carrying out Section 8698.1. The Los Angeles County Agricultural Commissioner, ~~or~~ the Orange County Agricultural Commissioner, ~~or both~~, the Santa Clara

County Agricultural Commissioner, or the San Diego County Agricultural Commissioner may each contract with the director to perform increased structural fumigation, inspection, and enforcement activities. These activities shall be funded by the moneys collected pursuant to this chapter.

8698.1. (a) If the county has contracted pursuant to Section 8698, any person who performs a structural fumigation in Los Angeles County, ~~or~~ Orange County, ~~or~~ Santa Clara County or San Diego County shall pay to the county agricultural commissioner a fee of five dollars (\$5) for each treatment conducted at a specific building or structure.

(b) The fees shall be submitted by the 10th day of the month following the month in which the treatment was performed. The fees shall be accompanied by a copy of a monthly pesticide use report showing the addresses, including the department number if applicable, of all structural fumigations. The report shall be in a form required by the director, shall identify the name and address of the person or company performing the fumigation, and shall include any other information requested by the director.

8698.5. Any funds collected pursuant to this chapter shall be paid to the county and used for the sole purposes of funding enforcement and training activities directly related to the structural fumigation ~~project~~ program created pursuant to Section 8698. The fees collected under this chapter shall be in addition to, and shall not be used to supplant, any other funds provided to the county agricultural commissioner pursuant to Section 12844 of the Food and Agricultural Code.

8698.6. This chapter shall remain in effect only until January 1, ~~2010~~2011, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, ~~2010~~2011, deletes or extends that date.